

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MRS. HOWARD OGDEN,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 83-75

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and civil penalty for violation of the state's open burning statutes and respondent's codes, came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Member and Gayle Rothrock, Chairman and presiding at Vancouver, Washington, on September 13, 1983. The informal hearing was electronically recorded.

Appellant Mrs. Ogden appeared and represented herself. Respondent Southwest Air Pollution Control Authority (SWAPCA) appeared by its attorney David Jahn.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 the testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto, which are noticed.

9 II

10 On April 27, 1983, at about 2:30 p.m., the appellant Mrs. Ogden
11 allowed or caused an outdoor fire of natural vegetation and prohibited
12 materials in a vacant lot to occur near the site of the apartment
13 building that she manages at 314 East 28th Street, Vancouver,
14 Washington.

15 III

16 The fire pile was approximately 10 feet in diameter and four feet
17 high in the middle of the vacant lot. The fire contained a wooden
18 door. Appellant admitted she threw a tire into the fire to get it
19 started, although the inspector did not see the tire, nor smell any
20 unusual odors in the air.

21 IV

22 Respondent's inspector responding to a complaint from a neighbor
23 arrived at the site of the fire and discussed codes and practices of
24 open burning, both residential and commercial, with Mrs. Ogden and the
25 neighbors. The fire was being extinguished as he left. The appellant

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1 received and signed a field notice of violation of Section 400-035 of
2 Regulation I of SWAPCA.

3 V

4 On April 28, 1983, appellant was issued a regular notice of
5 violation and a letter from the Executive Director of respondent
6 agency levying a \$50.00 fine which she received May 13, 1983. From
7 this appellant appealed to this Board June 9, 1983.

8 VI

9 Appellant indicated that it was the practice of the neighbors to
10 burn their clippings from their yards in the vacant lot. She also
11 indicated that she had called respondent agency and felt she received
12 permission to burn. The burning season in Clark County is usually
13 during the months of March and April of each year. Appellant had not
14 obtained a permit for the fire.

15 VII

16 Appellant has received no prior violations of SWAPCA Regulation I.

17 VIII

18 Any Conclusion of Law which should be deemed a Finding of Fact is
19 hereby adopted as such.

20 From these Findings the Board comes to these

21 CONCLUSIONS OF LAW

22 I

23 The Legislature of the State of Washington has enacted the
24 following policy on outdoor fires:

25
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1 It is the policy of the state to achieve and maintain
2 high levels of air quality and to this end to
3 minimize to the greatest extent reasonably possible
4 the burning of outdoor fires. Consistent with this
5 policy, the legislature declares that such fires
6 should be allowed only on a limited basis under
7 strict regulation and close control. (RCW 70.94.740).

8 Pursuant to this and other legislative authority, the respondent has
9 adopted its Regulation I, Section 400-035, which provides in relevant
10 part:

11 No person shall ignite, cause to be ignited, permit
12 to be ignited, or suffer, allow, or maintain any open
13 fire within the jurisdiction of the Authority, except
14 as provided in this Regulation...(2) Open burning may
15 be done under permit (under certain conditions)...

16 Appellant and her neighbors allowed open burning of natural
17 vegetation mixed with prohibited material which cannot qualify for a
18 permit and therefore, is in violation of Section 400-035(2).

19 II

20 Before igniting outdoor fires, it is the responsibility of the
21 citizens concerned to become aware of and to adhere to air pollution
22 control rules, such as respondent's Regulation I.

23 Because the violation committed by appellant is her first offense
24 against respondent's Regulation I, part of the assessed penalty should
25 be suspended.

26 III

27 Any Finding of Fact which should be deemed a Conclusion of Law is
hereby adopted as such.

From these Conclusions, the Pollution Control Hearings Board
enters this

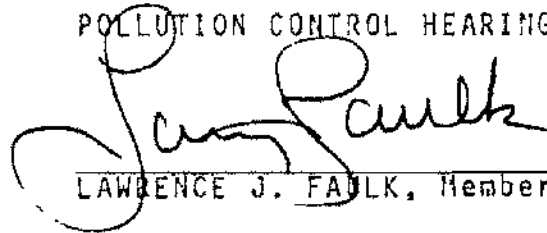
FINAL FINDINGS OF FACT,
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ORDER

The notice of violation and \$50.00 civil penalty is affirmed; provided, however, that \$25.00 of the penalty is suspended on condition that appellant not violate respondent's regulations for a period of one year after this Order becomes final.

DONE this 6th day of October, 1983.

POLLUTION CONTROL HEARINGS BOARD


LAWRENCE J. FAULK, Member


GAYLE ROTHROCK, Chairman